

**Zoning Board of Appeals
Minutes
August 15, 2006**

Members Present

Barry Silverstein-Chairman
Ronald Critelli
Lynne Raver
MaryAnn Leenig
April Callahan-Alternate

Members Absent

Maureen Kangas-Vice Chairman
Marc Breimer-Alternate

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Christopher Colsey – Director of Municipal Development

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, The Deputy Building Inspectors, Dutchess County Department of Planning, and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:04 pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman advised the Floor of the procedures for the ZBA.

Chairman Silverstein announced that Alternate Member April Callahan was on the Board for this meeting with full voting rights.

Chairman Silverstein called for comments or corrections to the minutes of the July 2006 meeting. Hearing none, he called for a motion to accept the minutes as written.

MaryAnn Leenig made the motion to accept the minutes as written from the July 18, 2006 meeting.

Lynne Raver seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

April Callahan – Aye

New Business

Appeal Number 1

Application Number ZB06-010, submitted by Thalle Industries, for a 25ft variance creating a 25ft side yard setback where 50ft is the minimum in a PI Zoning District to construct a Maintenance Building. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning cited concerns with the creek running on the north border of the property. It was not clear to the DC Planning Department if the building will be constructed on the bank of the creek as defined by the NYS DEC. The DEC may suggest a vegetative buffer be planted to protect the creek.

The Environmental Advisory Board cited a concern regarding the building being too close to the creek. They prefer the maximum distance from the creek to decrease the chances of contamination if there was a fluid spillage.

Town of Fishkill Planning Board offered a positive referral to the ZBA. It commented that when a non residential district abuts land in a residential district, the most restrictive setback requirements of either district govern. Thalle Industries is located in the PI Zoning District and abuts GB and R-4A Zoning Districts. The Planning Board adopted a negative declaration on February 23, 2006 and a resolution of preliminary and final approval of an amended site development plan on March 9, 2006 for the proposed maintenance building. Should the ZBA grant the variance, the action would be considered a site plan amendment and an amended resolution will be required by the Planning Board.

Wayne Akstin, Thalle Industries, presented to the Board. He advised the Board that the DEC classifies the creek as an intermittent stream, which means that there is no water running in it unless it rains. He commented that they currently have vegetation and would offer to enhance. The grade of the stream is similar to the grade of their property.

Chairman Silverstein asked Mr. Akstin what the main purpose of the maintenance building would be. Mr. Akstin advised that the maintenance building will be a steel framed building with a concrete slab. The purpose will be for the maintenance men to work on the vehicles indoors during inclement weather. Currently they do all maintenance outside. Chairman Silverstein asked if it would be for the trucks. Mr. Akstin confirmed that trucks, machines, conveyors and possibly the crusher would be serviced.

The Chairman questioned maintenance, such as oil changes. Mr. Akstin advised that they have a separate maintenance building for that type of servicing.

Ronald Critelli asked if there would be any chemicals stored in the building. Mr. Akstin stated that there would not. He advised that this building will be used mostly for welding and will allow the employees to be indoors.

Lynne Raver questioned the stream. She questioned the rains of last October. Mr. Akstin advised that this past June had several rains and the stream had water in it. He stated that the stream also receives outfall one and two and is part of their DEC stormwater discharge plan. If they need to discharge water from their site, it flows into the conduits of the stream. He advised that Thalle then monitors the creek and provides the DEC with reports and lab results.

Ms. Raver asked if it ever overflows. Mr. Akstin stated that it does not. He commented that back in October when water flowed onto Route 9 that the creek did not overflow. He commented that he has been there since 1987 and during his time it never overflowed.

Chairman Silverstein asked Mr. Akstin if he was aware of the concerns the Planning Board presented. Mr. Akstin stated that he was made aware of the Planning Board's concerns at the last Planning Board Meeting. He stated that the adjacent neighbor to the north is in the General Business District, but the neighbor to the east is the Fresh Air Fund and is residential. He commented that since Thalle is in a Planned Industry District it must adhere to the most restrictive setbacks which is why the 25ft setback wasn't originally allowed.

Mr. Akstin advised that the original plan was designed with the 50ft setback. He is concerned about the traffic flow and prior to the building being constructed, allowing the 25ft variance just make it better. Should the variance be denied, the building will still be constructed. The variance will just allow for better traffic flow.

Ronald Critelli asked what the problem with the traffic flow was and why they wanted the additional 25ft. Mr. Akstin pointed to the layout and stated that with the 50ft setback they will need to remove the berm. The 25ft setback will still require part of the berm to be removed but it will be gradual.

Chairman Silverstein asked Mr. Akstin what his feeling was regarding a positive response from the ZBA and the Planning Board in regards to his time. Mr. Akstin commented that he wanted the building constructed prior to Christmas. If the timing

doesn't work out, he would prefer to withdraw his application and build it where it had been approved.

Janis Anderson asked the Chairman if the Planning Board circulated to the ZBA for SEQR. Chairman Silverstein stated that they may not have. Ms. Anderson stated that she needs to see what type of action this was. Nancy Lecker stated that she did not remember being circulated to. Christopher Colsey advised the Board that the Planning Board may not have circulated to the ZBA because the original plan did not have setback issues. This action came after their approval. Chairman Silverstein asked Janis Anderson what the next step is for the ZBA. Ms. Anderson stated that she needs to find out if it is a Type I or Type II or and Unlisted Action. If it is an Unlisted Action the ZBA will do their own. If it is a Type II the ZBA does not have to do anything. Ms. Anderson stated that she did not have the Schedule of Regulations with her for the procedures if it is a Type I. Mr. Colsey stated that he would get the Planning Board file to see what it was listed as.

The Chairman continued with the meeting as Mr. Colsey went to get the Planning Board File.

Ronald Critelli asked how Mr. Akstin would feel if he got part of the 25ft, but not the whole thing. Would it help? Mr. Akstin stated that anything they receive would help.

The Chairman called for any additional questions or comments from the Board. Janis Anderson stated that she should find out the answer to the SEQR question prior to leaving because if the ZBA needs to establish Lead Agency, it should be done tonight.

Chairman Silverstein asked if the Public Hearing should be tabled until the end of the meeting or adjourned. Ms. Anderson stated that the ZBA could do either since the Lead Agency is not related to the Public Hearing.

The Chairman called for comments or questions from the floor. Hearing none he called for a motion to Adjourn this Public Hearing.

April Callahan made the motion to Adjourn the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

April Callahan – Aye

Appeal Number 2

Application Number ZB06-011, submitted by Trefz Corporation, for McDonald's Restaurant, requesting a variance to place a building mounted sign on the rear of the building instead of the principal side of the building. Applicant is also asking for an interpretation of 150-30 to install a window sign. Said request is a violation of Chapter 150-30 of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning responded that they have no authority regarding the interpretation of Town Code. They commented that the applicant is requesting a variance to permit the relocation of the building mounted sign from the principal side of the structure to the east side of the structure facing Route 9. They commented that although they understand the applicant's need to be recognized, there are several ways for potential customers to recognize this as a McDonald's Restaurant. At a recent site visit they noted not only the building mounted sign on the west side but also three large window signs. In addition several smaller signs near the drive thru menu board and exit lane clearly indicate this as a McDonald's. If the Board is inclined to grant the Applicant's request, there needs to be some assurance that the Applicant will not attempt to add additional signage in the future, including the large mall directory and such should be made as a condition of the approval. The DC Planning Department recommended the denial of the variance request. If the ZBA acts contrary to the DC Planning Department's recommendation, the law requires that it do so by a majority plus one of the full membership and to notify DC Planning of the reasons for its decision.

Town of Fishkill Planning Board offered a positive referral. The project sponsor has gone to great lengths to propose an exterior façade that is in congruity with the proximate Hess Mart and Home Depot, parking lot upgrades and dumpster enclosures. The Planning Board has allowed the existing window signs to remain.

Rob Spiak, Bohler Engineering and Paul Lopezzo, Trefz Corporation, presented to the Board.

Mr. Spiak stated that they are coming before the ZBA at the request of the Planning Board to help complete the architectural appeal of the building. The new sign code states that the south side of the building is actually the principal side of the building. The current sign is on the west side of the building facing the Home Depot. During a review with the Planning Board it was agreed that it would be nice to have that sign facing Route 9. He stated that another reason for the identity is that McDonald's does not and will not have a panel on the freestanding mall directory sign. Paul Lopezzo stated that the owner of the property will not give them permission to place a panel on the sign. Mr. Lopezzo advised that they are changing the façade of the building to a colonial look with clapboard siding. The traditional red roof will be changed to a green roof and will have beige siding. They will not be identifying themselves as a McDonald's Restaurant with any of the traditional colors or signs. If the sign is placed on the south side of the building, it would not be visible as the entrance from Route 9 is north of the building.

Mr. Spiak stated that it is important to note that they are planning to relocate the existing sign and he advised that a detail of the sign was enclosed with the application. It complies with the current code. The sign is currently a back lit roof sign and when they relocate it, they plan to externally light it. It will not be an internally illuminated. The wall will be raised to the parapet height to the roof line so it will be mounted to the wall.

Chairman Silverstein commented that the Board was under the impression that the sign was going to be the traditional McDonald's sign just being moved from the Home Depot side to the Route 9 side. This is a better sign.

Janis Anderson asked if the Applicant was asking for two signs or one. Mr. Lopezzo stated that there will only be one sign. The Chairman stated that the Board was also under the impression that the original sign was going to remain and a second one added. Mr. Lopezzo stated that they would love to have that, but the Planning Board would not approve it. The Chairman stated that there was a concern that additional signage was being requested.

Chairman Silverstein commented that the realistically, the sign facing the mall was not needed. It was needed on the side facing Route 9.

The Chairman questioned the window signs. Mr. Spiak stated that they are the standard window decals on the windows in the vestibules and in the front of the building. The chairman reiterated that the Planning Board did not have an issue with it.

Chairman Silverstein asked for their feelings regarding it in writing that they will not attempt any additional signage on the marquis, should it becomes available. Mr. Lopezzo stated that they would not want that. The Chairman reminded them that the vote must be a majority plus one and wanted to make sure he understood it. Mr. Lopezzo confirmed and agreed.

Janis Anderson stated that, regarding SEQR, this was also not circulated and it is an Unlisted Action. The ZBA needs to do an oral motion declaring Lead Agency on an uncoordinated SEQR review on an Unlisted Action. Chairman Silverstein called for the motion. Lynne Raver moved the motion and Ronald Critelli seconded. All in favor. Ms. Anderson requested permission to speak with John Andrews to complete a SEQR review. The Chairman granted Ms. Anderson permission.

Mr. Lopezzo commented that, regarding the mall directory sign, should it ever become available and possible for them, they would have to go before the Planning Board and again be referred to the ZBA for approval. Chairman Silverstein agreed and reminded him that the DC Planning Department stated that it they did not agree to sign off on their request, that they will be formally objecting and the ZBA must agree with a majority plus one.

The Chairman called for any additional questions or comments. Hearing none, he called for a motion to Close or Adjourn the Public Hearing.

Lynne Raver made the motion to Close the Public Hearing

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

April Callahan – Aye

Old Business

Continued Public Hearing for:

Application Number ZB06-008, submitted by William & Catherine Eisler, requesting a 24ft variance creating a 16ft side yard setback where 40ft is the minimum, a 45ft variance creating a 5ft rear yard setback where 50ft is the minimum and a 30ft variance creating a 20ft front yard setback where 50ft is the minimum to legalize an existing deck. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein stated that there are no new written communications.

William and Catherine Eisler presented to the Board. Mrs. Eisler presented the Board the corrected figures and a drawing of the deck.

Nancy Lecker reminded the Board that at the previous meeting the Board and the Applicants discusses different setback figures and what was discussed for the revised variance statement is different from the figures that the Eisler's are now presenting.

Ron Critelli asked for verification regarding how far off of the lot line their house sits. Mrs. Eisler stated that it is two inches. The house was built on the line. She reminded the Board that they boarder state land.

Chairman Silverstein asked if this was a replacement deck or a new deck. Mrs. Eisler stated that it was a new deck. Prior to this they only had a small walkway.

Chairman Silverstein called for additional questions or comments. Hearing none, he reminded the Board that at the last meeting, it was decided that if the corrected numbers were acceptable to the Board that they would close the Public Hearing and vote on it.

Ronald Critelli made the motion to Close the Public Hearing
MaryAnn Leenig seconded
Motion Carried

Barry Silverstein – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
MaryAnn Leenig – Aye
April Callahan – Aye

The Chairman called for a motion to Recess the ZBA Meeting to complete a written decision.

Ronald Critelli made the motion to Recess the ZBA Meeting
Lynne Raver seconded
Motion Carried

Barry Silverstein – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
MaryAnn Leenig – Aye
April Callahan – Aye

The ZBA meeting was recessed at 7:44pm. The Chairman called the meeting back to order at 7:53pm.

Vote:

ZB06-008, Eisler

Lynne Raver made the motion to Grant the variance request
April Callahan seconded
Motion Carried

Barry Silverstein – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
MaryAnn Leenig – Aye
April Callahan – Aye

Janis Anderson advised the Board that a review of the Thalle file finds that it was a Type II action and therefore the Board does not need to do any further review for SEQR. Chairman Silverstein reopened the discussion regarding this appeal and called for additional questions. Ronald Critelli stated that he felt that the Applicant does not need 25ft and prefers it to be away from the creek. He advised Mr. Akstin that he would be more comfortable with if he received half of what he was asking for. Mr. Akstin stated that it would be fine. Mr. Critelli commented that he understands that he does have a time constraint. Mr. Akstin reiterated that it works the way it is currently planned. If they had even another 10ft it would just make it better. Mr. Critelli stated that he always has a concern that if there was something there the day that there was water, it would get carried away.

Janis Anderson commented that the Board can request that John Andrews review it as well. Chairman Silverstein stated that that request can wait until they do their deliberations. The Chairman stated that he agreed with Mr. Critelli that this was not a hardship. It is a convenience. Mr. Akstin agreed. He stated that as a ZBA he can't vote for a variance that is a convenience not a hardship, and if he changes his figures, he will need to resubmit.

The Chairman called for a motion to Close this Public Hearing. Mr. Akstin commented that before the Hearing is closed, he wanted to address the Board. He stated that he felt that he did not prepare well enough for this meeting. Had he researched the policy and procedures better he would not have requested the variance. The Board has been honest with him and he felt he should be the same. He stated that he was going to withdraw he request and construct the building where it was originally planned. He stated that it was not a hardship and felt that the ZBA needs to reserve that for those who really need it.

Mr. Akstin formally withdrew his application and stated that he will build it according to his site plan. Nancy Lecker asked Janis Anderson if she needed anything in writing since it is on the tape and will be reflected in the minutes. Ms. Anderson stated it wasn't needed. Mr. Akstin asked if the Board would like it in writing. Chairman Silverstein advised it was not necessary.

Deliberations

06-008, Eisler, Legalize deck (if needed)

Not needed. Hearing closed and voted on

06-010, Thalle Industries, rear setback

Not needed. Application withdrawn during the meeting

06-011, McDonald's Restaurant, sign on rear of building & windows

Chairman Silverstein stated that the variance is less than he anticipated. They are not looking to add signage. They are looking to have the sign facing Route 9 where the traffic comes in instead of facing the Home Depot. He stated that the Planning Board was in agreement with the change. The window signs are in place already and they are just looking to keep them. They are not looking to add any. He stated that he did not have any objection to this.

MaryAnn Leenig stated that it made sense to have the sign facing Route 9. She asked for verification that the Applicant stated that the sign would not be lit. The drawing shows the sign and two lights facing it. Chairman Silverstein confirmed it. He stated that currently the sign has white florescent interior tubes. They are removing it.

The Chairman commented that the restaurant is in a mall. He agrees with the sign law in as much that it protects a residential area from having houses facing commercial property and seeing several signs. He has no problem with something that is in a business district surrounded by commercial business.

He stated that the Applicant made the decision to get a majority plus one to leave open the possibility that if in the future the marquis becomes available, they will have the right to apply for the space. Ronald Critelli commented that the majority plus one is a requirement of the DC Planning Department. The Chairman agreed.

Mr. Critelli commented that he would prefer a stipulation that if the marquis ever becomes available, that the Applicant would have to come before the ZBA for approval. He would like to see it documented that it was part of the approval for this variance. Janis Anderson stated that she would check to see if that can be a condition for approval. Normally the only way the Applicant would have to come back to the ZBA is if it violates the Zoning Law. She stated that the ZBA can place conditions on an approval, but she will have to research if this could be one of them.

MaryAnn Leenig asked if there was a reason they are not on the marquis. Chairman Silverstein stated that the owner will not allow it. They are looking for new tenants and prefer to reserve it for them.

Janis Anderson stated that the current sign was approved prior to the new sign law. She stated that she wasn't sure how the Town Board was handling pre-approved signs. Councilman Ronald Leenig addressed the Board and advised that anyone that has a sign that does not comply with the new code will have approximately 10 years to replace them with signs that comply.

Miscellaneous

The Board Members discussed changes to the existing Area Variance Application. Chairman Silverstein commented that a line should be added for legalizing something under the line that states “for the construction of”.

Chairman Silverstein called for any additional business. Hearing none, he called for a motion to Adjourn the ZBA Meeting.

Ronald Critelli made the motion to Adjourn the ZBA Meeting
MaryAnn Leenig seconded
Motion Carried

Meeting Adjourned at 8:08 pm

Respectfully submitted
Nancy Fitzgerald-Lecker
ZBA Clerk